

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN DELLS SCHOOL DISTRICT	:	
EMPLOYEES UNION, LOCAL 1401-A,	:	
AFSCME, AFL-CIO,	:	
	:	Case 21
Complainant,	:	No. 41771 MP-2197
	:	Decision No. 25997-A
vs.	:	
	:	
WISCONSIN DELLS SCHOOL DISTRICT,	:	
	:	
Respondent.	:	
	:	

Appearances:

Lawton & Cates, S.C., Attorneys at Law, by Mr. Bruce F. Ehlke, 214 West Mifflin Street, Madison, Wisconsin 53703-2594, for the Complainant.
 Mr. Karl L. Monson, Consultant, Wisconsin Association of School Boards, 122 West Washington Avenue, Madison, Wisconsin 53703, for the Respondent.

ORDER DENYING COMPLAINANT'S MOTION TO SET ASIDE
 EXAMINER'S DECISION, DISMISS RESPONDENT'S ANSWER
 AND GRANT COMPLAINANT'S PRAYER FOR RELIEF

Complainant Wisconsin Dells School District Employees Union, Local 1401-A, AFSCME, AFL-CIO having, on February 13, 1989, filed a complaint with the Wisconsin Employment Relations Commission alleging that the Wisconsin Dells School District had committed prohibited practices within the meaning of the Municipal Employment Relations Act; and Complainant having subsequently filed amended complaints dated February 28, April 14 and April 27, 1989; and by Order dated May 10, 1989, the Commission having appointed David E. Shaw as its Examiner in the matter; and Examiner Shaw having on May 10, 1989 issued a Notice of Hearing which inter alia directed the Respondent to file an answer to the complaint with the Commission on or before June 8, 1989; and Respondent having filed an answer on June 12, 1989; and Complainant having filed a Motion with the Examiner on June 12, 1989 asking that the Respondent's failure to file an answer on or before June 8, 1989 be found to warrant a determination that Respondent had admitted all facts alleged in the complaint as provided by ERB 12.03(6); 1/ and Examiner Shaw having thereafter advised Complainant by letter dated July 13, 1989 that on June 9, 1989 he had granted Respondent's request that the answer date be extended to June 12, 1989 because of clerical problems; and Complainant having on June 22, 1989 filed with the Commission a Motion to Set Aside Examiner's Decision, Dismiss Respondent's Answer and Grant Complainant's Prayer for Relief; and the parties thereafter having filed written argument in support

1/ ERB 12.03(6) provides:

(6) ADMISSIONS BY FAILURE TO ANSWER. Failure to file a timely answer, in the absence of extenuating circumstances recognized by the Commission, constitutes an admission of and a waiver by such party of a hearing as to the material facts alleged in the complaint.

of and in opposition to said Motion, the last of which was received on July 5, 1989; and the Commission having considered the matter, and being persuaded that the Motion should be denied;

NOW, THEREFORE, it is

ORDERED

That Complainant's Motion is denied.

Given under our hands and seal at the City of
Madison, Wisconsin this 18th day of August,
1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

WISCONSIN DELLS SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING
ORDER DENYING COMPLAINANT'S MOTION TO SET ASIDE
EXAMINER'S DECISION, DISMISS RESPONDENT'S ANSWER
AND GRANT COMPLAINANT'S PRAYER FOR RELIEF

Complainant's Motion seeks review of an Examiner's procedural determination regarding Respondent's request for an extension of the time within which an answer could be filed. The Examiner's decision is not a "final" disposition of the parties' dispute as to which a non-discretionary right to Commission review exists. As we decline to exercise our discretionary power to review the Examiner's interlocutory procedural determination, we have denied the Motion. 2/

Dated at Madison, Wisconsin this 18th day of August, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. H. Hempe /s/
A. H. Hempe, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

2/ See State of Wisconsin (Guthrie), Dec. Nos. 11457-C, D (WERC, 3/73),
aff'd State of Wisconsin v. WERC, 65 Wis 2d 624 (1974)